

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of B.R.P. and E.S.P., children)	(Not For Official Publication)
under eighteen years of age.)	
-----)	Case No. 20050426-CA
E.P.,)	
)	F I L E D
Appellant,)	(July 8, 2005)
)	
v.)	2005 UT App 319
)	
State of Utah,)	
)	
Appellee.)	

Second District Juvenile, Farmington Department, 166401
The Honorable Stephen A. Van Dyke

Attorneys: Don S. Redd, Layton, for Appellant
Mark Shurtleff and John Peterson, Salt Lake City, for
Appellee
Martha Pierce and Katharina Christensen, Salt Lake
City, Guardians Ad Litem

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

E.P. (Father) appeals the termination of his parental rights in B.R.P. and E.S.P. Father asserts the juvenile court erred in making specific findings of fact because they were not supported by the evidence, and further erred in its conclusions based on those findings.

In reviewing the termination of parental rights, this court "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re D.B., 2002 UT App 314, ¶6, 57 P.3d 1102.

The juvenile court found several grounds to terminate Father's rights pursuant to Utah Code section 78-3a-407. See Utah Code Ann. § 78-3a-407 (2002). Any single ground is sufficient to terminate parental rights. See id. (providing court may terminate parental rights if it finds "any one of" the

listed grounds); In re D.B., 2002 UT App 314 at ¶13 n.4. Father asserts, among other things, that the trial court erred in finding him to be unfit or incompetent as a parent, justifying the termination of his parental rights under Utah Code section 78-3a-407(c).

For essentially the entire duration of the proceedings regarding his children, Father was incarcerated or in a halfway house. After the removal of B.R.P. in October 2002, Father was arrested on drug-related charges. Before his arrest but after B.R.P. was adjudicated as neglected, Father had agreed to participate in the treatment plan and requirements of the adjudication order. Instead of pursuing the treatment plan, which included drug treatment, he was arrested for drug possession. His resulting incarceration was almost two years. E.S.P. was born while Father was incarcerated and was more than one year old before Father was released.

Although incarceration alone "does not represent willful conduct justifying termination of parental rights," In re M.C., 940 P.2d 1229, 1235 (Utah Ct. App. 1997), it may be evidence of unfitness or neglect in certain circumstances. See Utah Code Ann. § 78-3a-408(2)(e) (2002). Section 408(2)(e) provides that "[i]n determining whether a parent [is] unfit or [has] neglected a child the court shall consider . . . with regard to a child who is in the custody of the division, if the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year." Id. Furthermore, criminal activity and incarceration occurring after a parent has become the subject of a treatment plan and after a child has been removed from custody may be sufficient to support an allegation of unfitness. See In re M.L., 965 P.2d 551, 558 (Utah Ct. App. 1998).

Father's arrest and incarceration did indeed make him unavailable to parent the children and deprived the children of a normal parental home for more than one year. He acknowledged this in his petition. Because the children were in the custody of the Division of Child and Family Services, Father's incarceration and the resulting deprivation of a home for the children are sufficient to support a finding of unfitness. See Utah Code Ann. § 78-3a-408(2)(e); In re D.B., 2002 UT App 314 at ¶¶9-13. Furthermore, the timing of his arrest--after he was supposed to be pursuing a treatment plan to correct the circumstances that resulted in neglect--also supports a finding of unfitness. See In re M.L., 965 P.2d at 558.

Because there was sufficient evidence supporting a finding of unfitness, the juvenile court did not err in finding Father unfit as a parent. Unfitness is a listed ground for termination

of parental rights, and is sufficient on its own to justify termination. See Utah Code Ann. § 78-3a-407. Thus, the juvenile court properly terminated Father's rights on that ground and we need not reach Father's other claims.

Accordingly, the termination of Father's parental rights is affirmed.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge